

(i) Meets the requirements in § 1.1400L(b)–1T(c)(2) (description of property);

(ii) Meets the requirements in § 1.1400L(b)–1T(c)(3) (substantial use);

(iii) Meets the requirements in § 1.1400L(b)–1T(c)(4) (original use);

(iv) Meets the requirements in § 1.1400L(b)–1T(c)(5) (acquisition of property by purchase); and

(v) Meets the requirements in § 1.1400L(b)–1T(c)(6) (placed-in-service date).

(2) *Description of qualified New York Liberty Zone property*—(i) *In general.* Depreciable property will meet the requirements of this paragraph (c)(2) if the property is—

(A) Described in § 1.168(k)–1T(b)(2)(i); or

(B) Nonresidential real property or residential rental property depreciated under section 168, but only to the extent it rehabilitates real property damaged, or replaces real property destroyed or condemned, as a result of the terrorist attacks of September 11, 2001. Property is treated as replacing destroyed or condemned property if, as part of an integrated plan, the property replaces real property that is included in a continuous area that includes real property destroyed or condemned. For purposes of this section, real property is considered as destroyed or condemned only if an entire building or structure was destroyed or condemned as a result of the terrorist attacks of September 11, 2001. Otherwise, the real property is considered damaged real property. For example, if certain structural components (for example, walls, floors, and plumbing fixtures) of a building are damaged or destroyed as a result of the terrorist attacks of September 11, 2001, but the building is not destroyed or condemned, then only costs related to replacing the damaged or destroyed structural components qualify under this paragraph (c)(2)(i)(B).

(ii) *Property not eligible for additional first year depreciation deduction.*

Depreciable property will not meet the requirements of this paragraph (c)(2) if—

(A) Section 168(k) or § 1.168(k)–1T applies to the property; or

(B) The property is described in section § 1.168(k)–1T(b)(2)(ii).

(3) *Substantial use.* Depreciable property will meet the requirements of this paragraph (c)(3) if substantially all of the use of the property is in the New York Liberty Zone and is in the active conduct of a trade or business by the taxpayer in New York Liberty Zone. For purposes of this paragraph (c)(3), “substantially all” means 80 percent or more.

(4) *Original use.* Depreciable property will meet the requirements of this paragraph (c)(4) if the original use of the property commences with the taxpayer in the New York Liberty Zone after September 10, 2001. The original use rules in § 1.168(k)–1T(b)(3) apply for purposes of this paragraph (c)(4). In addition, used property will satisfy the original use requirement in this paragraph (c)(4) so long as the property has not been previously used within the New York Liberty Zone.

(5) *Acquisition of property by purchase*—(i) *In general.* Depreciable property will meet the requirements of this paragraph (c)(5) if the property is acquired by the taxpayer by purchase (as defined in section 179(d) and § 1.179–4(c)) after September 10, 2001, but only if no written binding contract for the acquisition of the property was in effect before September 11, 2001. For purposes of this paragraph (c)(5), the rules in § 1.168(k)–1T(b)(4)(ii) (binding contract), the rules in § 1.168(k)–1T(b)(4)(iii) (self-constructed property), and the rules in § 1.168(k)–1T(b)(4)(iv) (disqualified transactions) apply. For purposes of the preceding sentence, the rules in § 1.168(k)–1T(b)(4)(iii) shall be applied without regard to ‘and before January 1, 2005.’

(ii) *Exception for certain transactions.* For purposes of this section, the new partnership of a transaction described in § 1.168(k)–1T(f)(1)(ii) (technical termination of a partnership) or the transferee of a transaction described in § 1.168(k)–1T(f)(1)(iii) (section 168(i)(7) transactions) is deemed to acquire the depreciable property by purchase.

(6) *Placed-in-service date.* Depreciable property will meet the requirements of this paragraph (c)(6) if the property is placed in service by the taxpayer on or before December 31, 2006. However, nonresidential real property and residential rental property described in paragraph (c)(2)(i)(B) of this section must be placed in service by the taxpayer on or before December 31, 2009. The rules in § 1.168(k)–1T(b)(5)(ii) (relating to sale-leaseback and syndication transactions), the rules in § 1.168(k)–1T(b)(5)(iii) (relating to a technical termination of a partnership under section 708(b)(1)(B)), and the rules in § 1.168(k)–1T(b)(5)(iv) (relating to section 168(i)(7) transactions) apply for purposes of this paragraph (c)(6).

(d) *Computation of depreciation deduction for qualified New York Liberty Zone property.* The computation of the allowable additional first year depreciation deduction and the otherwise allowable depreciation deduction for qualified New York Liberty Zone property is made in

accordance with the rules for qualified property in § 1.168(k)–1T(d)(1)(i) and (2).

(e) *Election not to deduct additional first year depreciation*—(1) *In general.* A taxpayer may make an election not to deduct the 30-percent additional first year depreciation for any class of property that is qualified New York Liberty Zone property placed in service during the taxable year. If a taxpayer makes an election under this paragraph (e), the election applies to all qualified New York Liberty Zone property that is in the same class of property and placed in service in the same taxable year, and no additional first year depreciation deduction is allowable for the class of property.

(2) *Definition of class of property.* For purposes of this paragraph (e), the term class of property means—

(i) Except for the property described in paragraphs (e)(2)(ii), (iv), and (v) of this section, each class of property described in section 168(e) (for example, 5-year property);

(ii) Water utility property as defined in section 168(e)(5) and depreciated under section 168;

(iii) Computer software as defined in, and depreciated under, section 167(f)(1) and the regulations thereunder;

(iv) Nonresidential real property as defined in paragraph (b)(3) of this section and as described in paragraph (c)(2)(B) of this section; or

(v) Residential rental property as defined in paragraph (b)(3) of this section and as described in paragraph (c)(2)(B) of this section

(3) *Time and manner for making election*—(i) *Time for making election.* Except as provided in paragraph (e)(4) of this section, the election specified in paragraph (e)(1) of this section must be made by the due date (including extensions) of the Federal tax return for the taxable year in which the qualified New York Liberty Zone property is placed in service by the taxpayer

(ii) *Manner of making election.* Except as provided in paragraph (e)(4) of this section, the election specified in paragraph (e)(1) of this section must be made in the manner prescribed on Form 4562, “Depreciation and Amortization,” and its instructions. The election is made separately by each person owning qualified New York Liberty Zone property (for example, for each member of a consolidated group by the common parent of the group, by the partnership, or by the S corporation). If Form 4562 is revised or renumbered, any reference in this section to that form shall be treated as a reference to the revised or renumbered form.